IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11610 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

VIRAM JETABHAI SUTREJA

Appearance:

MR SAURABH J MEHTA for the Petitioner.

MR GK RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2001

ORAL JUDGEMENT

1. The petitioner-Gujarat State Road Transport Corporation has challenged the Award passed by the Presiding Officer, Labour Court, Junagadh, dated 17.2.2000 passed in Reference (L.C.J.) No. 40 of 1992. By the aforesaid Award, the Labour Court passed an order of reinstatement in favour of the present respondent,

with 10% back wages for the interim period.

2. The respondent-workman was serving as a driver in the S.T. Corporation and at the relevant time, he had put in about 13 years of service. The respondent was subjected to departmental proceedings on the ground that on 10th March, 1987, while the respondent was in Junagadh Depot, he had gone to take charge of the bus at the workshop. The respondent had gone with a stick in his hand and was under the influence of alcohol. The respondent, after entering into the workshop, struck the glass table top with the stick and broke the glass of the table of the Head Mechanic. The respondent was also subjected to criminal case. The respondent was accordingly subjected to the said criminal proceedings on the ground that, while on duty, he was under the influence of alcohol and he acted in an indisciplined and rude manner. After he was subjected to the show cause notice, he was dismissed from service. The said dismissal order was challenged by raising industrial dispute, vide Reference (L.C.J.) No.40 of 1992. It is required to be noted that so far as the criminal case is concerned, for want of evidence, he was acquitted. The Labour Court came to the conclusion that looking to the documentary evidence as well as considering the order of the criminal court, the charge against the workman was not established beyond doubt. The said observation of the learned Judge is at page 19 at the concluding part of Point No.2. The Labour Court also thereafter exercised powers under Section 11A of the Industrial Disputes Act and considering the fact that the workman had put in 13 years of service, it was found that the order of removal is little bit harsh and the Labour Court, therefore, passed an order of reinstatement with 10% back wages. The aforesaid order is challenged by the State Transport Corporation by filing this petition.

3. This Court, while admitting the matter, has stayed the order of the Labour Court. Of course, this Court has not passed any specific order regarding compliance of the statutory provisions of Section 17B of the I.D. Act. Today, this matter is disposed of finally.

4. It is required to be noted that the Labour Court, in its order, has clearly observed that the charges against the concerned employee is not proved totally. However, the aforesaid conclusion of the Labour Court is not based on proper appreciation of the facts of the case. The Labour Court also has considered the case under Section 11A of the Industrial Disputes Act. It,

therefore, cannot be said that the charges against the respondent are not proved and even the reasoning of the Labour Court to that extent is very much halfhearted. It is required to be noted that if the charges are not proved, there is no question of resorting to Section 11A of the I.D. Act. Now, therefore, the question which is required to be considered is whether the Labour Court has rightly exercised its powers under Section 11A of the I.D. Actor not. It is not in dispute that the respondent-workman had put in about 13 years of continuous service with the Department and the question which is required to be considered is whether the misconduct committed by him can be said to be such which warrants his dismissal from service. The Labour Court has given reasons while discussing issue No.3 in this behalf. In the facts and circumstances of the case, it was found that the order of dismissal is very harsh. The Labour Court has found that, in past, the concerned employee had indulged in six incidents of misconduct. The Labour Court, therefore, withheld 90% of back wages and granted 10% of back wages to the concerned workman. The reasoning of the Labour Court, which is given in issue No.4 is not at all satisfactory. However, looking to the facts of the case, in my view, it is not necessary that the extreme penalty of dismissal should have been awarded to the concerned workman. It is not in dispute that he has broken the glass of the table with his stick on the relevant day. In the enquiry, of course, it was proved that he was under the influence of alcohol, though, in the criminal court, that charge was not established against him. Under the circumstances, while confirming the order of reinstatement which is passed by the Labour Court while exercising the powers under Section 11A of the I.D. Act, I am of the opinion that withholding of 90% of back wages is not enough punishment. In the facts and circumstances of the case, therefore, the order of the Labour Court is required to be modified so far as imposition of penalty is concerned and it is directed that the concerned workman will not be entitled to any back wages during the intervening period except that he will be entitled to all other notional benefits during the intervening period except payment of back wages. The respondent will be entitled to the benefits of all notional benefits during the intervening period and his service should be treated as continuous for all practical purposes except for payment of back wages during the intervening period. The respondent was serving as a driver and it seems that he has also not behaved properly and had indulged in an act of indiscipline and since it was found by the Department that he was under the influence of alcohol, though, of

course, that charge is not proved in the criminal court, it would be open for the S.T. Corporation, considering the fact that he is holding such a sensitive post of driver, to post him on any other equivalent post, if the Corporation so thinks fit. Over and above the same, the respondent-workman is subjected to penalty of withholding of one increment with future effect. In order to see that, in future, he may be careful, there should be some punishment which is required to be imposed on him so that he may think twice before behaving in such a manner in future, especially when the lives of the passengers are in his hands when he drives the vehicle. The order of the Labour Court is required to be modified accordingly to the aforesaid extent and the same is substituted to the aforesaid extent, i.e. reinstatement without back wages for the intervening period and withholding of one increment with future effect. It is clarified that the respondent will be entitled to regular pay, etc., from the date of the Award of the Labour Court and naturally, he will be entitled to back wages from the date of the Award of the Labour Court till he is reinstated in Service. Appropriate order of reinstatement will be passed within a period of one month from today. The respondent is also subjected to penalty of withholding of one increment with future effect. The order of the Labour Court is accordingly modified. Rule is made absolute to the aforesaid extent with no order as to costs.

20th August, 2001 (P.B. Majmudar, J.)

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(apj)